IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Plaintiffs,

Vs.

COUNTY OF CONTRA COSTA, et al.,

Defendants.

SAMELLA BURT, et al.,

Plaintiffs,

Vs.

COUNTY OF CONTRA COSTA, et al.,

Plaintiffs,

Defendants.

No. C-73-0906 SAW

CONSENT DECREE.

No. C-73-1967 SAW

Defendants.

Plaintiffs and plaintiff intervenors (hereinafter plaintiffs) have brought the above entitled civil rights actions to remedy an alleged pattern and practice of employment discrimination against females and persons of racial and ethnic minority status by the defendants and the defendant intervenors (hereinafter defendants).

The Court has heretofore ordered that the above entitled actions be maintained as class actions on behalf of a class comprised of plaintiffs and all other persons denied employment or advancement by defendants or who have been harrassed in their employment by defendants because of their sex or racial or ethnic minority status.

It appears to the Court that the parties to this lawsuit have consented and agreed to the entry by this Court of the following Consent Decree without any finding or adjudication on the merits of the case and without constituting any admission by the defendants of discrimination.

By entering into this Consent Decree, the undersigned defendants do not admit to, nor has the Court made any determination that there is or has been violation of any law, right, rule or regulation. This Consent Decree is an enforceable declaration of defendants' desire to continue and further implement an effective and affirmative equal

employment opportunity policy beyond the affirmative action policies currently in effect at the County of Contra Costa. No findings of any kind have been issued by the Court substantiating any of the allegations made by the plaintiffs.

NOW, THEREFORE, I'm IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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The County of Contra Costa and the Fire Protection Districts which have petitioned to intervene in the above entitled action as parties defendant are granted leave to intervene and are hereby made parties defendant in the above entitled consolidated actions, and their answer is hereby deemed filed.

II

The following plan for equal employment opportunity in Contra Costa County (hereinafter referred to as "Affirmative Action Program") is hereby adopted and approved by this Court and the parties are directed to follow its provisions:

- A. Goals and Timetables.
- A-l. It is the goal of the parties that the percentage of minorities and females employed in each job classification and each department in county employment reflect the supply of qualified members of minority groups and females in the work force in Contra Costa County.
- A-2. Action to attain the goal of the parties will be carried out within the context of the merit system.
- A-3. Defendants will supply plaintiffs with a numerical and percentage breakdown for each minority and for females employed in each job classification and each department in county employment, as reflected by data available to the defendants.
- A-4. Specific goals shall be obtained by making the following determinations:
- a. Whether imbalance in the number of qualified females or minorities employed exists as to any specific job classification.
- b. The number of females and minorities which should be included in county employment to correct any such imbalance which is found to exist.
- c. Timetables setting interim and final target dates by which specific progress towards correcting such imbalances should be attained.

- A-5. Criteria for specific goal determination.
- a. The percentages of qualified minorities and females in the work force in Contra Costa County shall be determined from the most recent available State of California Employment Development Department Affirmative Action Data. If such data does not provide information adequate to make a clear determination as to the work force composition for a given job classification, the parties shall force composition for a given job classification, the parties shall rely upon other information which shall be given weight in accordance with the objectivity, experience, and expertise supporting it.
- b. Imbalance in the number of females or minorities employed shall be deemed to exist only when such number is less than 80% of the number representative of the percentage available in the work force of Contra Costa County qualified for a given job classification.
- c. When imbalance exists, a goal for affirmative action shall be established such that the number of females or minorities employed shall be not less than 100% of that number reflecting employment equal to the percentage of qualified females or minorities in the work force in Contra Costa County for the classification.
- d. Timetables for progress shall be based upon the yearly number of vacancies occurring within the job classification, through employee turnover and the creation or elimination of new positions. If such vacancies are filled only from open examinations the time—table shall assume that the proportion of such vacancies per year which can be filled by qualified female and minority persons is 1 1/2 times the proportion of such persons as are in the work force in the times the proportion of such persons as are in the work force in the County. If such vacancies are filled from promotional examinations, the timetable shall be based upon the same assumption unless defendants can demonstrate that an adequate number of female and minority promotional candidates cannot be made available; in which case a reasonable timetable shall be determined. Timetables shall include yearly interim goals.
- A-6. Specific goals and timetables that have been determined shall be subject to review and reconsideration upon the written request of either party setting forth its contentions and reasons, at yearly intervals, beginning January 1, 1976.
- A-7. Defendants will monitor all hirings and separations from county employment ("separations" includes dismissals, resignations, layoffs, rejections of probationary employees, retirements, or any other methods by which an employee leaves county employment), and will report to plaintiffs at six month intervals beginning January 1, 1976, as to the number of females and minorities by classification who were hired or terminated during the period.

A-ö. Defendants will review each job classification to which there are thirty or more positions allocated, and shall submit the following information to plaintiffs as a proposed determination:

- a. A statement as to whether imbalance in the number of females or minorities employed exists as to the classification.
- b. If an imbalance is found to exist, a statement establishing a goal for affirmative action.
- c. If a goal for affirmative action is established, a timetable for progress and accomplishment of the goal.
- d. Defendants shall provide a written statement of the purported factual basis for each determination.

After completion of the above described review, defendants will review or re-review any job classification, including those to which fewer than thirty positions are allocated, upon plaintiffs' written request, delivered to the Director of Personnel.

- A-9. Defendants' review obligations shall be accomplished as follows:
- a. First priority shall be given to classifications limited to males only on July 1, 1974, provided that plaintiffs request such priority review in writing.
- b. Second priority shall be given to classifications as to which requests for examinations are pending.
- c. Third priority shall be given to classifications having the largest number of allocated positions.

Defendants shall complete a review of all job classifications to which thirty or more positions are allocated by January 1, 1977. The proposed determinations resulting from each job classification review will be mailed to plaintiffs after completion.

- A-10. Two weeks after any of defendants' proposed determinations have been mailed to plaintiffs, such determinations shall become final unless the plaintiffs give written notice that such determinations are unsatisfactory.
- A-ll. If plaintiffs give notice that a proposed determination as to any classification is unsatisfactory, the parties will attempt to reach agreement as to:
 - a. whether or not imbalance exists
 - b. affirmative action goals
 - c. timetables

If agreement is not reached within one month of such notice, the matter shall be referred to the Civil Service Commission for hearing and decision. Plaintiffs may appeal the decision of the Civil Service Commission and invoke arbitration by written notice delivered to the Director of Personnel within one week after notice of decision by the Commission.

- A-12. Determination of imbalance includes inter alia making findings as to the number or proportion of each minority and of females in the work force who are qualified to perform the specific job classification and are willing to apply for county employment.
- a. For the purpose of determinations hereunder it will be presumed that the most recent available State of California Employment Development Department (EDD) Affirmative Action Data showing the proportion of females and of each minority in the work force in given job classifications in Contra Costa County correctly describe the proportion of qualified females and of each minority in the work force with respect to similar County job classifications, in the work force with respect to similar County job classifications, provided that the EDD data includes information from which a reason-provided that the EDD data includes information from which a classifications can be determined.
- b. In matching County classifications with the most appropriate EDD classifications, the Defendants shall have the burden of proof. Either party may contend that the work force figures resulting from an appropriate match between County and EDD classifications should be adjusted to more correctly describe the work force for the County job classification but such contentions and any adjustment resulting therefrom must be based upon substantial evidence, and the party desiring such adjustment has the burden of proof. The minimum qualifications expressed for a given job classification by the County shall be of substantial evidentiary value but shall not be conclusive in ascertaining the existence of imbalance.

b. Minimum Qualifications

- B-l. When it has been determined that an imbalance in the number of females or of any minority employed exists as to a job classification, the minimum qualifications for that classification shall be subject to review as provided herein, upon plaintiffs' written request delivered to the Director of Personnel.
- B-2. When a review of minimum qualifications has been requested, they shall be reevaluated with a view to isolating and eliminating probable factors which disproportionately reject females or minorities without being job related. Requirements such as experience in unskilled positions and education in nonprofessional or nonmanagerial positions will be subject to special study. The defendants will be responsible for showing that minimum qualifications are reasonably

related to job performance. The parties will attempt to reach agreement as to job related minimum qualifications for each such classification.

- B-3. After reaching a proposed agreement, or if agreement is not reached within one month after a review of given minimum qualifications has been requested, the matter shall be referred to the Civil Service Commission for hearing and decision. Plaintiffs may appeal the decision of the Civil Service Commission and invoke arbitration by written notice delivered to the Director of Personnel within one week after notice of decision by the Commission.
- B-4. Limitations as to sex shall be eliminated from all classification specifications. Specific positions may be limited as to sex only when such limitation is a bona fide occupational qualification.
- B-5. For classifications limited to males only on July 1, 1974, existing eligible lists shall be cancelled.

C. Examinations

- C-1. The County shall inform plaintiffs monthly in writing of all Civil Service examinations requested by county departments.
- C-2. When it has been determined that an imbalance in the number of females or minorities employed exists as to a job classification, and review of the minimum qualifications for that classification has been requested and completed, examinations for such classifications shall be subject to the provisions contained herein.
- C-3. Defendants will give plaintiffs notice of the breakdowns as to the sex and minority status of those persons taking and those persons passing such examinations, including the ranking of those passing, without indicating names.
- C-4. Testing imbalance shall be deemed to exist in an examination if the passing rate of the number of qualified females or minorities who participate in the examination is less than 80% of the passing rate of the remaining participants. If testing imbalance exists as to the number of females or minority examinees who pass an examination, such examination results will be discarded upon the written request of plaintiffs, delivered within two weeks after notice of the breakdown has been furnished, unless defendants within one week of such demand give notice to plaintiffs requesting that the examination be reviewed.
- C-5. When the results of a test have been discarded under Part C-4, the County shall administer such re-examination or new examina-

tion as the Civil Service Commission may determine. If test imbalance exists as to the number of females or minority examinees who pass the second examination, such examination shall be subject to review as provided herein upon plaintiffs' written request delivered within one week after notice of the breakdown has been furnished.

- C-6. When an examination review has been requested, the County will be responsible for showing that the examination components and requirements are job related. The parties will attempt to reach agreement as to examination content.
- C-7. After reaching a proposed agreement as to an examination, or if agreement is not reached within one month after an examination review has been requested, the matter shall be referred to the Civil Service Commission for hearing and decision. Plaintiffs may appeal the decision of the Civil Service Commission and invoke arbitration by written notice delivered to the Director of Personnel within one week after notice of decision by the Commission.
- C-8. If there is no test imbalance as to the number of females or minority examinees who pass the test, but more than 75% of such females and minorities are ranked in the lower half of the range of passing scores, the examination shall be subject to review as provided herein upon plaintiffs' written request delivered within two weeks after notice of the breakdown has been furnished, unless defendants determine to discard the examination results and notify plaintiffs in writing. Such review will be carried out under the procedure set forth in Parts C-6 and C-7.
- C-9. No oral examination for any entry level classification as to which imbalance exists will be administered unless the oral board includes at least one female or one minority person. One female or minority person on the board shall be representative of a group as to which such imbalance exists, unless a qualified representative is not reasonably available, in which case defendants shall furnish a written explanation to plaintiffs.
- C-10. Information as to the race and sex of applicants for all examinations will be kept by defendants and furnished to plaintiffs promptly as it is compiled.

D. Recruitment

- D-1. The County shall attempt to reach minorities and women and attract them to apply for county employment. The Affirmative Action Officer shall make serious efforts to insure that women and minorities do apply for County employment.
- D-2. Recruitment steps shall include, but not be limited to the following:

- a. Publicize the Affirmative Action Program regularly through appropriate channels which may include newspapers, and, on a public service basis, radio and television.
- b. Work closely with minority and women's groups and minority and women's training programs in recruiting minorities and women to apply for jobs.
- c. Schedule examinations for entry level classifications with a large number of positions in East County (Pittsburg) and West County (Richmond) as well as Central County (Martinez).
- d. Make a special effort to recruit welfare recipients to county employment.
- D-3. Every six months the county shall mail with all AFDC checks and all General Assistance checks information as to known pending examinations and the procedure to apply for county employment.
- D-4. Social workers and eligibility workers shall be made aware by circulation of written notice, of pending examinations and employment opportunities and shall advise potentially employable recipients upon application or annual review as to such opportunities, including information as to provisions available under the AFDC program for working parents.
- D-5. Appointment, transfer and promotion practices shall be evaluated. Appointing authorities, supervisors, and evaluators shall be informed of the Affirmative Action Program and of their responsibilities in implementing it. When there is imbalance in a job classification and a female or minority is passed over in favor of a person who has scored lower in the final examination results, the Director of Personnel shall require a written justification from the appointing authority upon written request of the plaintiff or the adversely affected party.
- D-6. County shall make reasonable efforts to develop justifiable training positions that will lead to employment in higher classifications.
- D-7. Defendants shall supply plaintiffs every six months with information concerning new or additional project employment programs and/or employee training programs that are administered by the County, including a racial and sex breakdown of all project employees. County shall institute procedures whereby project employees may be qualified through the civil service process and transfer to regular county employment.

E. Separation Review

- E-1. All persons separated from County employment will be furnished with a written form indicating they may appeal within two weeks to the Affirmative Action Officer and the Civil Service Commission, in writing or in person, if they believe the separation was motivated by discrimination based on sex or minority status.
- E-2. In cases of such appeal, the Affirmative Action Officer shall investigate the circumstances surrounding the separation and attempt to mediate the problem. If the Affirmative Action Officer is not able to resolve the problem to the satisfaction of the is not able to resolve the problem to the Civil Service Commission employee, the matter shall be referred to the Civil Service Commission which will hear all persons concerned and render a written decision which will hear all persons concerned and render a written decision as to whether the separation was motivated by discrimination based on sex or minority status, and make a determination accordingly. A copy of the decision shall be furnished the employee. The Commission, if permission by the employee is given, shall furnish plaintiffs attorney with a copy of the decision. The Commission may refer appeals hereunder to a hearing officer for hearing and recommended decision.
- E-3. The employee may appeal a decision by the Commission here-under to the California State Courts in accordance with Code of Civil Procedure §1094.5, and a decision by the Commission hereunder shall not limit the employee's right to proceed in Federal Court.

F. Administration

- F-1. The County will appoint an Affirmative Action Officer with the same authority as a Civil Service Department division chief, whose duties will include working with plaintiffs' representative in carrying out the County's Affirmative Action Program. Such person will be responsible for implementation of the procedures provided for herein. Plaintiffs' views as to the desirable qualifications for candidates will be invited before an Affirmative Action Officer is appointed.
- F-2. Plaintiffs may request determination as to the existence of imbalance within specific job classifications in specific departments. Upon such request the provisions of Part A shall be applied. Goals and timetables shall be established for the department if such imbalance is found to exist.
- F-3. Pending negotiations, reviews, determinations as to imbalance, third party references, or any other procedures hereunder will not prevent the County from proceeding with examinations and the appointment of employees, but:
- a. County will attempt to resolve equal employment opportunity issues before administering examinations, and will give

plaintiffs notice before proceeding with the examination and employment ment process in any classification as to which equal employment opportunity issues hereunder are pending and unresolved.

- b. Eligible lists resulting from examinations given pending resolution of equal employment opportunity issues hereunder will be limited in duration to six months.
- c. When imbalance in the number of females or minorities employed has been determined to exist as to a job classification plaintiffs may request that examinations not be given or that appointments not be made, pending resolution of pending specific equal employment opportunity issues hereunder. Such request shall be directed in writing to the Civil Service Commission and must demonstrate cause why the examination or employment process should The Commission shall make a decision on the matter after hearing. If plaintiffs are not satisfied with the decision, they may require review by arbitration by giving written notice to the Director of Personnel within one week after the decision. arbitrator shall have all powers necessary to make an effective award, including power to order a stay of examination or employment procedures pending award. In determining whether to stay examination or employment procedures, the arbitrator shall follow the substantive legal principles applicable to injunctive relief in the federal courts of the United States.
- d. Civil Service Commission hearings shall be completed and decisions made within one month after any matter, excepting separation appeals under part E, is referred to the Commission for decision. The Commission may extend the time for hearing and decision for good cause, set forth in writing.

F-4. Arbitration

- a. In each case in which arbitration is invoked, if within two weeks an arbitrator has not been agreed upon, the parties shall select a single arbitrator from a list of five names submitted alternately by the American Arbitration Association and the California State Conciliation Service. If the parties are unable to agree, each, beginning with the plaintiff, shall strike one name in turn and the last remaining name on the list shall be the arbitrator.
- b. Subject to the provisions hereof, the arbitrator shall determine all contested issues concerning procedure or evidence.
- c. The subjects of arbitration are limited to decisions of the Civil Service Commission which are subject to appeal and as to which arbitration has been invoked as expressly provided herein.
- d. The arbitrator shall affirm, modify, or reverse the decision of the Commission. The arbitrator's determination on the

merits shall be based only upon the facts and arguments previously exchanged in writing between the parties and the record (if any) of the Civil Service Commission proceedings, provided, that either party may support previously introduced written opinions of experts with oral testimony by such experts. In making such determination the arbitrator snall exercise independent judgment.

- e. The arbitrator's determination shall be written, shall state the grounds on which it is based, shall include an award of costs and attorney fees to the prevailing party, shall be delivered to both parties by mail, and shall be subject to review or reconsideration after two years from the date thereof.
- f. Not later than fifteen days after delivery of the arbitrator's determination either party may apply in writing for correction of the award upon any ground set forth in Section 11 of Title 9 of the United States Code, giving notice thereof to the Other party, which may file a written objection thereto within ten days. The arbitrator shall either deny the application or correct the award within thirty days after receipt of the application for the award within thirty days after to act within such thirty correction. Failure of the arbitrator to act within such thirty day period shall constitute denial of the application for correction.
- g. Arbitration hereunder is subject to enforcement or review by the above-entitled Court as provided in Title 9 of the United States Code.
- F-5. Plaintiffs' counsel shall maintain an advisory board in connection with the implementation of the above described program. Said board shall include representatives of each minority resident within Contra Costa County, all interested women and employees' organizations, and all other interested groups and persons. Member-ship in the advisory board shall be open and meetings held regularly. Plaintiffs' counsel shall maintain publicity regarding the advisory board and shall maintain contact with community groups regarding the Affirmative Action Program.
- F-o. Defendants shall assist plaintiffs by paying the necessary and actual expenses of up to 12 advisory board members for up to 18 meetings per year for 3 years. Such expenses shall include transportation not to exceed \$.15 per mile, child care not to exceed \$5.00 per meeting, and necessary meals not to exceed \$3.50 per meeting.
 - F-7. All notices, requests, or demands, shall be in writing, must be limited to a single classification, examination, or Civil Service Commission decision, and may be delivered by deposit in the United States mail, postage prepaid. Notices to defendants shall be addressed to the Director of Personnel, 651 Pine Street, Martinez CA 94553. Notices to plaintiffs shall be addressed to Contra Costa Legal Services Foundation, P. O. Box 1669, Richmond CA 94801.

F-8. All actions taken on behalf of plaintiffs hereunder shall be taken by plaintiffs' counsel of record or by such representatives, not exceeding four in number, as may be designated by written notice from plaintiffs' counsel to the Director of Personnel.

F-9. Definitions:

- a. "Contra Costa County" means the geographical area and political entity of the State of California known as the County of Contra Costa.
- b. "county employment" means all employment under the jurisdiction of the Contra Costa County Board of Supervisors and the Contra Costa County Civil Service Commission.
- c. "defendants" means the parties defendant in the above entitled action and their agents, servants and employees.
- d. "Director of Personnel" means the appointed or acting Contra Costa County Director of Personnel.
- e. "examination" means those tests of fitness which are administered candidates after the applications are accepted and which result in determination as to placement on an eligible list or disqualification, and includes written tests, performance tests, physical agility tests, ratings of training and experience, application evaluations, qualifications appraisals by oral interview and/or other methods specified by the Civil Service Commission.
 - f. "imbalance" means imbalance as described in Part A-5b.
- g. "minimum qualifications" means that part of a Contra Costa County classification specification designated as minimum qualifications.
- h. "party" or "parties" means the defendants and the plaintiffs as defined herein.
- i. "plaintiffs" means the counsel of record for plaintiffs in the above entitled action or their designated representatives.
- j. "qualified females" or "minorities" means female or minority persons qualified to perform a job described in a Contra Costa County classification specification, and willing to apply for county employment.
- k. "testing imbalance" means testing imbalance as described in Part $C\!-\!4$.

- l. "work force" means the body of people available for employment residing in Contra Costa County.
 - F-10. The foregoing plan is subject to modification as follows:
- a. By written agreement of the parties through their counsel of record, approved by the Court.
- b. Either party by noticed motion may apply to the Court for an order modifying said plan upon a showing by clear and convincing evidence that such modification is necessary to avoid irreparable injury to a party, or to accommodate unforeseeable or changed circumstances.

III

Nothing in this Consent Decree shall require or be construed to require defendants to hire, discharge, promote or demote any employee, to nire or maintain more employees than are needed to perform the work available, to create any job classification, or to continue in effect any work or job classification now being performed or in existence.

ΙV

Insofar as the above entitled consolidated actions express claims for money damages or other individual relief not provided for in this Consent Decree, the same are hereby dismissed, without prejudice.

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The above entitled consolidated actions are hereby determined to be class actions under Rule 23(b)(2) of the Federal Rules of Civil Procedure. The Court's orders re notice to individual class members heretofore entered in the above entitled actions are vacated.

VI

Defendants snall pay the following costs and attorney fees:

- A. Costs: \$1,143.00 payable to the Contra Costa Legal Services Foundation.
- B. Attorney Fees: \$10,428.00 payable to the Contra Costa Legal Services Foundation.

VII

As to the claims for money damages or other individual relief dismissed herewith, statutes of limitation applicable to the

initiation of court proceedings are suspended until the entry of this Consent Decree, as follows: a) as to the County of Contra Costa and the Fire Districts, only on the date of this order permitting their intervention, b) as to the Contra Costa County Board of Supervisors and the Contra Costa County Civil Service Commission, from November 5, 1973, c) as to the individual defendants, from June 4, 1973.

VIII

The Contra Costa County Civil Service Commission will receive complaints from persons claiming employment discrimination on account of their sex or minority status. Individuals who believe they are entitled to relief on account of such discrimination by the County are encouraged to file complaints with the Commission. Such complaints will not limit the rights of such individuals to court relief.

IX

This Consent Decree is a final judgment and is effective as of the date it is filed with the Court. The Court will retain jurist diction of these actions to insure compliance with the Affirmative Action Program. After five years from the entry of this Consent Decree either party by noticed motion may apply to the Court for an order vacating said decree and dismissing these actions on the ground that further supervision by the Court is not necessary.

Dateu: October 14, 1975.

/s/ Stanley A. Weigel

United States District Judge